

Office of Residential Care Facilities

Section 232 Program
STAKEHOLDER FORUM

Document and Regulatory Improvements
May 31, 2012



The Scope of These Publications

- 154 Documents Covering All Aspects of ORCF's Business
- Proposed Rule that limits REAC inspections and also provides the regulatory basis for some key document revisions. Examples include:
 - Clarification/enhancement of operator responsibilities with respect to financial, operational and accountability matters
 - Creation of long-term debt service reserve



Highlights of Some Key Documents

- Operator Regulatory Agreement (Substantially Revised)
 - Requires quarterly/YTD financials
 - Spreadsheet submission, not online via REAC
 - Certified, but generally not required to be audited
 - Requires maintaining positive working capital
 - Requires prompt notice to HUD and Lender of matters placing permits/approvals at risk
 - Lays out basis for prompt action against operator (e.g., operator replacement, consultant)



Highlights of Some Key Documents

- Owner Regulatory Agreement (Substantially Revised)
 - Creates long-term debt service reserve on all new transactions
 - Owner “shall require Operator to comply with ...Operator’s Regulatory Agreement....”
 - Distributions are barred when owner is in violation of R.A. or in mortgage default
 - Owner reconciles surplus cash semi-annually, replenishes negative surplus cash



Highlights of Some Key Documents

- Management Certification (New - Previously HUD rarely had controlling document with management agent)
 - Management agent commits to comply with project's Regulatory Agreements
 - Certification also specifically enumerates many requirements (e.g., ensure expenses are reasonable and necessary, maintain records)



Highlights of Some Key Documents

- Master Lease Addendum, Master Lease Subordination, Non-Disturbance Agreement (New)
 - “One indivisible lease of the Facilities, not separate leases governed by similar terms”
 - Provides for cross collateralization of subleases
 - Executed by Borrower, Master Tenant, Individual Facility Operator and Lender
 - Gives lender rights but provides very substantial cure opportunities



Highlights of Some Key Documents

- Operator Security Agreement
 - Historically HUD relied on Owner Security Deed to reach operator's assets
 - Through this document the Operator *directly* creates security interest in key assets



Highlights of Some Key Documents

- Security Instrument/Mortgage Deed of Trust (Revised)
 - Makes improvements consistent with MF's improvements

